IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL APPEAL NO. 6 OF 2007

1. Julie Mulie Parab
2. Neelam Muli Parab
3. Poonam Muli Parab
4. Sonam Muli Parab
5. Vikram Muli Parab

all r/o Kumbharjua
represented by Neelam Muli Parab. .... Appellants.

V/s

1. Vithal V. Chopdenkar
House No. 191, Chichwada,
Chimbel, Ilhas, Goa.

2. State through
the Public Prosecutor,
Panaji-Goa. .... Respondents

Mr. R.G. Ramani, Advocate for the Appellants.

Mr. Heredia, Advocate for the Respondents.

Coram : N.A. BRITTO, J.

Date : 4th AUGUST, 2007

ORAL JUDGMENT :

This is complainant's appeal against the acquittal of the accused under Section 138 of the Negotiable Instruments Act, 1881.

2. The case of the complainant was that the accused had issued a cheque dated 20/10/1999 for Rs. 1,00,000/- (Rupees One Lac Only) towards the discharge of his liabilities, as the accused had taken loan from the

complainant. The said cheque was drawn on Canara Bank, Panaji, but on presentation for payment, it was returned dishonoured for insufficiency of funds. There is no dispute that intimation to this effect was received by the complainant on 31/3/2000 upon which the complainant served the statutory notice upon the accused dated 10/04/2000, which the accused received on 11/04/2000, demanding the payment within 15 days which the accused failed to comply and, therefore, the complainant filed the complaint on 9/05/2000.

3. The complainant expired during the pendency of the complaint on 6/10/2002 as a result of which the complainant's heirs were brought on record and the complainant's son deposed in support of the complaint filed by the father and in the course of his deposition admitted that his father was giving loans on interest to various persons and, therefore, the learned trial Court held that the complainant's father was a money lender, and, regarding which there is no serious dispute raised on behalf of the complainant.

4. The learned trial Court however acquitted the accused holding that the provisions of the Goa Money Lenders Act, 2001 were applicable to the facts of the case. The learned trial Court held that the complainant who had lent money had expired on 6/10/2002 after the Goa Money Lenders Act, 2001 (new Act, for short) had come into force from 13/09/2001 and since the complainant had not registered in terms of Section 5 thereof under the new

Act, the transaction did not create a legally enforceable debt.

5. Learned trial Court did not refer to the provisions of Goa, Daman & Diu Money Lenders' Act, 1977 (old Act, for short).

6. Learned Counsel on behalf of the complainant submits that the provisions of the new Act were inapplicable to the facts of the case since according to the learned Counsel the offence took place on or about 26/04/2000 i.e. to say after the accused failed to comply with the statutory notice sent by the complainant requiring the accused to pay the amount due to the said cheque. Learned Counsel further submits that even the complaint was filed on 9/05/2000 much before the new Act came into force and, therefore, as on the date of the commission of the offence as well as the filing of the complaint, the debt due by the accused to the complainant was clearly recoverable under the old Act which was in force from 30/04/1977 and which governed the transaction between the complainant and the accused and which provided for no prohibition to recover the money lent even in case the money was lent by a money lender. Learned Counsel on behalf of the complainant has specifically drawn my attention to Section 21 of the old Act which states as follows:

> 21. *Contracts not to be void on account of offence* – Where a money-lender is guilty of an offence punishable under this

> Act any contract made by him in relation to his business of money-lending shall not be void by reason only of that offence nor shall he, by reason only of that offence, loose his right to the loan and the interest and other charges, if any, payable in respect thereof.

7. On the other hand, learned Counsel on behalf of the accused has adopted the reasoning of the impugned judgment.

8. Section 5 of the new Act provides that on and from the commencement of this Act (i.e. to say 13/09/2001), no money-lender shall carry or continue to carry on the business of money-lending except in the area for which he has been granted a licence and except in accordance with the terms and conditions of such licence.

9. Section 14 of the new Act provides for the stay of suits . Sub-section (1) thereof states that no court shall pass a decree in favour of a money-lender in any suit to which this Act applies, unless the court is satisfied that at the time when the loan or any part thereof, to which the suit relates was advanced, the money-lender held a valid licence, and if the court is satisfied that the money-lender did not hold a valid licence, it shall dismiss the suit.

Sub-section 2 of Section 14 provides that nothing in this section shall affect –

> (a) suits in respect of loans advanced by a money-lender before the date on which this Act comes into force; provided such moneylender has, within 15 days of the date of coming into force of this Act registered himself;
>
> (b) the powers of a Court of Wards, or an Official Assignee, a receiver, an administrator or a Court under the provisions of the Presidency-Towns Insolvency Act, 1909 (Central Act 3 of 1909), or the Provincial Insolvency Act, 1920 (Central Act 5 of 1920) or any other law in force corresponding to that Act, or of a liquidator under the Companies Act, 1956, to realise the property of a moneylender.

10. Section 15 of the new Act provides that every person who has advanced a sum of money or is otherwise covered by the provisions of this Act shall register all such past transactions of money-lending with the Registrar within 15 days of the coming into force of this Act under an intimation thereof.

11. Admittedly, when the offence was committed in this case and when the complaint was filed on 26/04/2000 and 9/05/2000 respectively, the transaction between the parties was governed by Section 21 of the old Act which specifically provided that where a money-lender was guilty of an offence which was punishable under the Act any contract made by him in relation to his business of money-lending would not be void by reason only of that offence or that he would not loose his right to the loan and the interest and other charges. In other words Section 21 stipulated that money lent could be recovered, notwithstanding the fact that otherwise the money-lender could be punished for not holding money-lenders licence. In other words, as

on the date of filing the complaint, the complainant could have recovered the money due on the cheque by filing a suit and, therefore, the debt was legally recoverable.

12. Learned Counsel on behalf of the accused next contends that the cheque represented only an amount of Rs. 20,000/- lent and the balance of Rs. 80,000/- represented the interest charged by the complainant. In this context it may be noted that in the very evidence of the complainant it was suggested to him that his father was charging interest at the rate of 10% per month and if it is so Rs. 80,000/- could not be the amount due on interest. In any event it was for the accused to step in the witness box and translate the said suggestion into evidence with a view to rebut the presumption which was otherwise available to the complainant in terms of Section 139 of the Act that a cheque issued was towards the debt payable by the accused to the complainant. The complainant had produced the cheque issued by the accused regarding which there was no dispute. The said cheque when presented for payment was returned dishonoured for insufficiency of funds. The complainant had sufficiently proved his case that the cheque issued by the accused was issued towards the debt payable to the complainant.

13. In view of above, the appeal succeeds. The judgment and order of the learned trial Court dated 8/09/2006 is hereby set aside and the accused is

hereby convicted under Section 138 of the Negotiable Instruments Act, 1881.

14. Counsel on behalf of complainant submits that the complainant is not interested in sending the accused to jail. Counsel on behalf of both the parties agree that the accused will pay to the complainant a sum of Rs. 1,50,000/- by way of compensation and within a period of 3 months and in case the same is not paid the accused will undergo S.I. for 3 months. In view of the above, the accused is directed to pay compensation of Rs. 1,50,000/- to Neelam M. Parab within a period of 3 months and in default to undergo S.I. for 3 months.

N.A. BRITTO, J.

NH/-